IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2641 of 2001
to
FIRST APPEAL No 2646 of 2001
with
CROSS OBJECTIONS No 62 of 2001
to
CROSS OBJECTIONS No 67 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

CHAIRMAN/ SECRETARY, RAJDHANI COOP. HOUSING SOCIETY LTD.

Appearance:
MR RC KODEKAR, AGP for Appellants
MR AJ PATEL for Respondent
MR AC GANDHI in Cross Objections Nos. 62 to 67/01

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 05/10/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. State of Gujarat and the Executive Engineer, Patnagar Scheme, have preferred these appeals under Section 54 of the Land Acquisition Act, 1874 (hereinafter to be referred to as "the Act") read with Section 96 of the Code of Civil Procedure, 1908 against the award made by the Reference Court namely 3rd Extra Assistant Judge, Ahmedabad (Rural) at Mirzapur in Land Acquisition Reference Nos. 310/94 to 315/94 on 24th December, 1998, whereby the claimants are declared entitled to get the sum of Rs. 80/- per sq. mt. for the lands bearing Survey No. 66, 76 and 77 and Rs.105/- per sq. mt. for the lands bearing Survey Nos. 81/2, 78 and 79 as an additional compensation over and above the amount of compensation awarded by the Land Acquisition Officer along with statutory benefits.

#. Notification under Section 4 of the Act was published on 17.1.91 (the date should be November 20, 1990 as pointed out by the learned A.G.P. from the Extra Ordinary Gazette Part 1B), for acquisition of the lands situated in the sim of village Nabhoi, Taluka & District Gandhinagar. The lands were sought to be acquired as the same were likely to be required for public purpose i.e. for Koba-Adalaj-Link Road. After following the procedure, notification under Section 6 of the Act was published on 31.7.91. The Special Land Acquisition Officer, by his award dated 30.11.92, determined the market price of the lands at the rate of Rs. 11/- per sq. mt. for non agricultural land and Rs. 7/- per sq. mt. for agricultural land. The claimants invoked the provisions contained in Section 18 of the Act, for claiming Rs. 300/- per sq. mt. However, the Reference Court, on appreciation of evidence determined the market price mentioned earlier. It is against this common award made by the Reference Court, the present appeals are preferred and are, therefore, required to be disposed of by common judgment. It is required to be noted that the claimants have also preferred Cross Objections being aggrieved by the determination of market price on lower side awarded by the Reference Court and, therefore, these appeals as well as Cross Objections are to be disposed of by this common judgment.

#. On behalf of the claimants, one Rajeshbhai Vinubhai was examined vide exh. 39. From his evidence, it transpires that at the relevant time, he was the Chairman

of Rajdhani Cooperative Housing Society (Registration certificate is produced vide exh. 31). Vide exh. 14, he has testified his say on oath. Survey Nos. 78, 79 and 81/2 were purchased by the Rajdhani Cooperative Housing Society for the benefits of the members and the members commenced the work of construction. It is stated by this witness that the lands as aforesaid occupied by the aforesaid Cooperative Society were non-agricultural lands. Not only that, but after taking permission from the appropriate authority namely Panchayat, to erect the buildings, (vide exh. 32) the members commenced the work of construction on 27.5.82, under information to Circle Inspector vide exh. 33. The said witness as aforesaid on oath has stated that Survey Nos. 66, 76 and 77 which are situated just adjoining to the survey numbers of the aforesaid Society were also acquired under the common award under Section 11 of the Act. One Mahendrabhai Ambalal Patel was owner of these survey numbers. He erected the compound wall and a bungalow. The evidence discloses that the said Mahendrabhai was using the Survey Nos. 66, 76 and 77 for the purpose of residence after erecting the bungalow. Thus, all lands were non-agricultural lands. The District Development Officer, by a letter dated 4.7.81 granted permission in that behalf which is produced on the record vide exh. 21. In the village form 7 x 12, entry about the change of use has been made vide entry no. 636 and the same is produced vide exh. 22.

#. So far as the exact location is concerned, the witness has stated that village is situated at a distance of about 1 kilometer from the lands acquired. The land bearing Survey No. 384 of one Rameshbhai was acquired for the purpose of construction of the road (i.e. for the said purpose, land of present respondents were acquired). The Reference Court made an award vide exh. 23, awarding compensation at the rate of Rs. 150/- per sq. mt. for non agricultural lands and Rs. 61/- for agricultural lands.

#. This witness has pointed out in his evidence that the land bearing Survey Nos. 62, 64, 68 and others which is adjoining to the lands acquired, were assessed for the purpose of the stamp valuation. According to his say, sum of Rs. 2,000/- per sq. mt. was fixed for the said survey numbers. For other lands, valuation was determined at the rate of Rs. 1500/- per sq. mt. The lands which were situated near river side were assessed and valuation thereof was fixed at Rs. 700/- per sq. mt. He has produced on record exhs. 27 to 30 to support his say in this behalf.

#. This witness has pointed out in his evidence that for conversion of land from old tenure to new tenure, the District Development Officer, fixed price at Rs. 550/- per sq. mt. for the lands situated at village Nabhoi. The witness has produced exh. 25 to support his say.

#. So far as the exact location is concerned, the witness has pointed out that the lands are situated at a distance of about 2 kilometers from Ahmedabad and at a distance of 4 kilometers from Gandhinagar. The lands are situated at a distance of one and a half kilometer from Motera Stadium. The lands are adjoining to a Dairy which is known as Sughad Dairy. For the purpose of potentiality of lands, this witness has pointed out that from Nabhoi Circle, where intersection was to be provided for connecting the road, development commenced upto Indira Bridge, there is pharmaceutical unit of Torrent Laboratory, Mother Dairy, plots of Gujarat Industrial Development Corporation, Plasma Laboratory, Kanoriya Hospital and other multi-storey complexes. Just opposite the acquired lands, there is multi-storey building known as Jain Aradhna Centre. The witness has pointed out that nearby the lands, there is development. The lands situated at village Chandkheda, adjoining to village Ambapur were acquired for Oil & Natural Gas Corporation in the year 1982, wherein the claimants were awarded Rs. 112/- per sq. mt. There also, multi-storey buildings have come up. Reading the cross-examination of this witness, not a single question is put to this witness in cross-examination so as to say that the witness is not telling the truth or no question in cross-examination has been put to elicit answer which would assist the court for determining the market price.

#. For the purpose of development, our attention has been drawn to the evidence of Patel Mathurbhai Amthabhai, who was at the relevant time working as Special Land Acquisition Officer. There is no doubt about the fact that there was no agricultural use of these lands as the lands were used for the purpose of erecting the residential buildings and in 3 survey numbers, construction was already carried out. Despite this factual aspect, this witness has deposed before the Reference Court that no evidence has been produced before him by the claimants to point out that the level of the lands is even or no bills have been produced to show as to what was the yield. Reading the cross-examination of this witness, it appears that according to this witness, unless and until the claimants place material before him to point out the development, he would not accept the

development of the land. If the cross-examination of this witness is referred, he has admitted that the lands bearing Survey Nos. 78, 79 and 81/2 were non-agricultural lands situated on the corner of the two roads from Sabarmati to Gandhinagar and Gandhinagar to Indira Bridge. He has also admitted that at the time, when the notification under Section 4 of the Act was published, there was erection of building upto the plinth level. He has admitted that for determining the market price, one has to keep in mind the development which has taken place within the area of one kilometer. This witness has completely supported the say of the witness of the claimants that the development such as petrol pump, Jain Aradhna Centre, Torrent Laboratory, GIDC plots, Mother Dairy, Kanoriya Hospital and Sugadh Dairy has taken place there. The Land Acquisition Officer has also admitted that the lands situated at village Ambapur were also acquired for the purpose for which these plots were acquired. Reading the evidence of this witness, it is clear that he was aware about the award passed by the Reference Court.

#. It is in view of the aforesaid oral evidence and the award exh. 23, the case is required to be considered for determining the market price.

##. Before us, a copy of the map is produced. From the map it is clear that Gandhinagar Express Highway leading to Gandhinagar proceeds from south to north. At the relevant time, at the site, there was intersection of National Highways leading to Gandhinagar; one National Highway leading to Gandhinagar from Indira Bridge-Airport and the other National Highway leading to Gandhinagar from Sabarmati-Ahmedabad. At this intersection, Koba-Adalaj Road was to be constructed. At the point of intersection, the acquired lands are situated. With a view to connect the road leading to Kalol, from this intersection, highway was to be constructed and for this purpose, the lands were acquired. At the intersection from east to west, road is now already constructed connecting Kalol. In view of the development which is admitted, potentiality of land was required to be considered by the Reference Court. The Special Land Acquisition Officer, in his award has noted that the lands were even and levelled and survey nos. 78, 79 and 81/2 were non-agricultural lands. The village site is at a distance of one kilometer in the western side. Village Nabhoi is at a distance of one kilometer from Gandhinagar-Ahmedabad Express Highway. The Special Land Acquisition Officer has also noted in the award that the lands belonging to the Rajdhani Cooperative Housing

Society is non-agricultural land and upto plinth level, construction is carried out for erection of buildings.

##. Learned A.G.P. Mr. R.C. Kodekar submitted that the Reference Court has committed serious error in enhancing the market price without appreciating material placed before the court indicating what was the market price during the last 5 years from the date of notification under section 4 of the Act. So far as the lands situated at village Nabhoi are concerned, no transaction has been noted after 1986 till 1990 as observed in the award by the Special Land Acquisition Officer. However, transaction with regard to agricultural land which took place in 1986 and 1987 has been considered. The Special Land Acquisition Officer has also noted that in 1981, Rajdhani Cooperative Housing Society itself purchased the land on payment of Rs. 17.20 ps. per sq.mt. There is also reference to transaction of non agricultural land which took place on 5.5.89 at the rate of Rs.. 7.12 ps. per sq. mt. The learned Assistant Government Pleader submitted that before the Special Land Acquisition Officer, there were two other instances indicating the transfer of lands in 1990, at the rate of Rs. 4.98 ps. per sq. mt. and Rs. 4.94 ps. per sq. mt. The lands were situated hardly at a distance of 750 meters from the lands in question. Reading these documents, it appears that the documents seem to be undervalued. If the Society itself purchased in 1981 at the rate of Rs. 17.20 ps. per sq.mt. then, it is difficult to believe that despite the fact that on account of shortage of land persons would enter into transaction of the land at the rate of Rs. 4.94 ps. and Rs. 4.98 per sq. mt. nearby these lands and that too for non-agricultural lands. When these instances do not disclose true market price, obviously, they are required to be discarded. In absence of registered sale deeds, these instances cannot be considered.

##. In the instant case, on behalf of the claimants, it was submitted that the agricultural lands situated at village Ambapur which are much interior were acquired at much higher rate, then, there is no reason as to why these claimants should not be given that price. We have seen the map. Village Ambapur is much interior. The lands in question are on the highway, (two plots are on the highway itself and the rest of survey numbers are adjoining to the plot abutting the highway). These survey numbers are upon the intersection of Gandhinagar Express Highway leading to Indira Bridge and Ahmedabad. In view of the development which is an admitted position, price is required to be determined. In Land Acquisition

Reference No. 250/94, 3rd Extra Assistant Judge, Ahmedabad (Rural) at Mirzapur determined the market price of the land of Ambapur village on 25th June, 1998. In all 35 survey numbers of old tenure, new tenure and non-agricultural lands were acquired and notification under Section 4 of the Act was issued on 1.8.91. The Special Land Acquisition Officer fixed the market price of the land at the rate of Rs. 45/- per sq. mt. for non-agricultural lands and Rs. 5/- per sq. mt. for agricultural lands. The Reference Court noted the facilities are available at village Ambapur such as Panchayat, bor-well, petrol pump, Express Highway etc. Ambapur is situated at a distance of 8 kilometers from Gandhinagar. The Reference Court was aware about the principle laid down by the Apex Court in the case of State of Madras v. A.M. Nanjan and others [1976 SCC 473] and in the case of Shivlal Keshavlal Shah vs. Additional Special Land Acquisition Officer [9 GLR 752]. It is also required to be noted that the anxiety on the part of the court must be to ascertain and find out fair and just market price of the lands which are sought to be acquired. The Reference Court in the aforesaid case awarded additional amount at the rate of Rs. 61/- per sq. mt. for agricultural lands and Rs. 150/- per sq. mt. for non-agricultural lands. Therefore, considering the aforesaid aspects, we find no merits in the appeal filed by the State. So far as the Cross Objections are concerned, the claimants have pressed their demands equivalent to the amount awarded for the non-agricultural lands situated at village Ambapur in view of use of the present lands, situation and potentiality. The learned AGP Mr. R.C. Kodekar has placed reliance on exh. 26 an award made by the Reference Court for the lands situated at village Nabhoi, which were acquired for Narmada Project. In that case, initially Rs. 3.50 ps. per sq. mt. were awarded while the Reference Court awarded an additional amount of Rs. 53/- per sq.mt., thus totalling to Rs. 56.50 ps. per sq. mt. It is required to be noted that in the aforesaid case, notification under Section 4 was published on 3.12.85. But in view of subsequent development soon thereafter and particularly in view of the national highway, development which has been pointed out by the witnesses cannot be lost sight of. Considering the totality of the circumstances, price is required to be determined. The State has accepted the award made by Reference Court for acquuisition of agricultural as well as non-agricultural lands situated in the sim of Ambapur which are away from the intersection of National Highway. It is not possible to accept the contention of the State that market value of these lands would be much less than the lands situated

far away from National Highway. One has to consider the potentiality. Lands were non-agricultural and there was much development at the relevant time and that cannot be forgotten while determining the market price. In our opinion, as the demand is restricted to the amount of Rs. 150/- per sq. mt. which has been paid to the claimants of village Ambapur, we allow Cross Objections to the aforesaid extent. The appeals preferred by the State are dismissed. The claimants are entitled to claim an amount of Rs. 150/- per sq. mt. considering the use of the land, situation etc.

##. There is sufficient evidence on record to show that at the relevant time, there was development towards their lands. In fact, the lands in question were not agricultural. The claimants put the lands to use for residence and for erection of buildings for a Cooperative Housing Society. Considering several factors market price is to be determined. Evidence on record points out about the development adjoining to the lands in question. There is Sughad dairy. From the point of intersection where the lands are situated, development is upto Indira Bridge on this Highway. In para 7, we have pointed out the development which had already taken place. The Reference Court while determining the market price was required to consider development which had already taken place at the time of notification under Section 4 of the Act. The claimants have pointed out in evidence that there were building activities of a substantial nature in the area itself. In view of the development which had already taken place, obviously, there was shortage of land at that place. Considering all the aspects, one has to consider the situation of acquired lands. The evidence reveals that the some survey numbers were on highway and some behind the said survey numbers on Highway. Evidence of fast development cannot be forgotten. In view of development which had already taken place, these lands were acquired for construction of a road. Considering the buildings which were already developed, it can be said that there was fast development. Industrial, religious, commercial and residential development was there. Looking to the fact that the lands were near to Gandhinagar, Ahmedabad, Chandkheda, and Sabarmati, in view of fast development, explosive population and higher price of lands in Ahmedabad and Gandhinagar, this area was already developed as deposed by the claimant.

##. On behalf of the State, Patel Mathurbhai Exh. 56 who was at the relevant time, Special Land Acquisition Officer, clearly stated that when notification under

Section 4 of the Act was published, in survey nos. 78, 79 and 81/2 construction upto plinth level was carried out. Survey No. 76, 77 and 66 are in front of Bungalow of Mahendrabhai (One of the claimants). It was submitted that construction which was carried out was not to be touched and therefore, considering the use of the land, price is to be determined. When evidence reveals that the buildings have been already erected and in some construction is in progress, merely because of large size of plot, there may be construction in a part of the large plot, it does not loose its building potentiality. Even if nearby the plot, there is development, the same is to be considered. In the present case, development was there. It is also admitted that electricity is available. There is development in the area and thus say of the claimant is supported. Therefore, considering these aspects award was required to be made.

##. Mr. A.J.Patel, learned advocate appearing for the claimants, submitted that in view of pronouncement of judgment by the Apex Court in case SUNDER vs. UNION OF INDIA now reported in 2001 SOL Case No.551, the claimants are also entitled to interest on solatium. The Apex Court in the said judgment pointed out as under:

"27. We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana Vs. Smt. Kailashwati & Ors. (supra)

`Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'

28. In our view the aforesaid statement of law is in accord with the sound principle of

interpretation. Hence, the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

We also note that the claimants of village Ambapur are already paid the amount of compensation. There is no earthly reason as to why the present claimants should be deprived of their legitimate claim. Therefore, we direct that after proper verification, 50% amount of compensation shall be paid to the claimants within three months from today and rest 50% amount of compensation shall be paid to the claimants within three months thereafter.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]

*****

pirzada/-